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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 IN RE
5

6 MUNICIPAL DERIVATIVES ANTITRUST
7 LITIGATION
8 -----x

New York, N.Y.
December 14, 2012
2:10 p.m.

9 Before:

10 HON. VICTOR MARRERO

11 District Judge

12 APPEARANCES

13 HAUSFELD LLP
14 Attorneys for Plaintiffs
BY: MEGAN E. JONES

SWATHI BOJEDLA
-and-

15 BOIES, SCHILLER & FLEXNER LLP
16 BY: BILL ISAACSON
-and-

17 SUSMAN GODFREY LLP
18 BY: SETH ARD
-and-

19 LABATON SUCHAROW
BY: BERNARD PERSKY

20 SIMPSON THACHER & BARTLETT LLP
21 Attorneys for Defendant JP Morgan
BY: TOM RICE
RYAN KANE

22 SULLIVAN & CROMWELL LLP
23 Attorneys for Defendant Wachovia Bank
BY: CHRISTOPHER VIAPIANO
DAVID B. TULCHIN

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1 (Case called)

2 THE COURT: This is a proceeding in the matter of
3 Municipal Derivatives Antitrust Litigation. It is docket
4 number 08 Civil 2516.

5 The Court scheduled this proceeding to consider the
6 class plaintiffs' motion for final approval of a settlement
7 with defendants JP Morgan and Wells Fargo.

8 MS. JONES: Good afternoon, your Honor.

9 Megan Jones from Hausfeld, co-lead counsel.

10 With me is Bill Isaacson, also co-lead counsel from
11 Boies Schiller and Seth Ard, also co-lead counsel from Susman
12 Godfrey.

13 THE COURT: For the defendants?

14 MR. RICE: Good afternoon, your Honor.

15 Tom Rice from Simpson Thacher for JP Morgan Chase and
16 Company.

17 Here with me is Ryan Kane also from my firm.

18 MR. VIAPIANO: For Wells Fargo, Christopher Viapiano
19 of Sullivan Cromwell and my colleague David Tulchin.

20 MS. JONES: Your Honor, class plaintiffs, I believe
21 our papers are complete on this issue but are willing to set
22 forth the factors that support granting these orders if the
23 Court wishes.

24 THE COURT: Could you just briefly summarize what you
25 believe are the factors warranting the granting of the

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1 approval.

2 Have any objections been raised since preliminary
3 approval?

4 MS. JONES: No -- to either settlement, your Honor.

5 Class plaintiffs are here today seeking final approval
6 of \$77,720,502.57 total in settlements from Wells Fargo and JP
7 Morgan. Each settlement was the product of extensive arms
8 length negotiations and represents what we believe is an
9 excellent result for the class.

10 In addition to the approximately 77.7 million, both
11 defendants have agreed to provide cooperation to the class,
12 including discovery in connection with the ongoing prosecution
13 of this complex antitrust transaction. This has already
14 resulted in hundreds of thousands of tapes being produced to
15 class plaintiffs without having to result to formal discovery
16 and millions of pages of documents, in addition to the
17 transactions that were produced to the class. We are using
18 this information in ongoing settlement negotiations and can see
19 an immediate impact.

20 The Court has already preliminarily approved the Wells
21 Fargo settlement as well as the JP Morgan settlement. Notice
22 of both settlements was directly sent to over 60,000 potential
23 class members as well as publication notice took place in 22
24 publications that reached over 4 million potential class
25 members.

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1 There have been no objections to either settlement.

2 There were 83 class members that opted out of the Wells Fargo
3 settlement and 92 class members that opted out of the JP Morgan
4 settlement.

5 In connection with the final approval, there are three
6 orders for decision before the Court. The first is the
7 proposed final approval for JP Morgan located at docket number
8 1736 and it is ready for entry upon decision by the Court. The
9 proposed final approval for Wells Fargo located at docket
10 number 1737 is ready for entry at any point after February 15,
11 2013, at which point CAFA notice will be complete.

12 THE COURT: At this point, let me note for the record
13 that the Court has received a letter dated November 15 from
14 counsel for Wachovia, also known as Wells Fargo Bank,
15 requesting that final action on the approval, if granted, be
16 put off for 60 days.

17 MS. JONES: Your Honor, class plaintiffs have no
18 objection to that, obviously.

19 Lastly, class plaintiffs have submitted an amended
20 order reducing this Court's award of legal fees by \$1.2
21 million. This is as a result of an agreement with the settling
22 defendants about opt-outs. That is located at 1726-1 and it is
23 submitted to the Court without opposition from the settling
24 defendants, so the Court's previous award has been adjusted
25 downward and is ready for entry at any time.

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1 At the final approval stage, the Court must determine
2 whether the settlement is fair, adequate and reasonable. It
3 must also determine that the notice was adequate, including
4 CAFA notice. I will address each of these briefly.

5 The Second Circuit has set forth nine factors for
6 determining whether the settlement was fair and reasonable in
7 the City of Detroit v. Grinnell.

8 The first factor is the complexity and expense and
9 likely duration of the litigation, factor 1. Federal antitrust
10 cases are notoriously complex and protracted, and this case is
11 no exception. It has been pending since 2008 and involves bid
12 rigging and other activities in this complex municipal
13 derivatives industry. Demonstrating liability and proving
14 damages against a large number of defendants here has already
15 required extensive discovery work and we have set that forth in
16 the Isaacson declaration, including the review of thousands of
17 hours of audio recordings and millions of pages of documents.

18 The second factor is the reaction of the class to the
19 settlement. As mentioned earlier, there were no objections,
20 despite having millions of potential class members being
21 noticed.

22 The stage of the proceedings and the amount of
23 discovery completed is factor 3. Plaintiffs' counsel have
24 reviewed thousands of hours of tapes and had complex and
25 extensive settlement proffers with each defendant and we feel

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1 that the amount of discovery was sufficient when we entered
2 into the settlement.

3 Factors 4, 5 and 6 are the risk of establishing
4 liability and damages and in maintaining the class action
5 through trial. Plaintiffs have no doubt that if we continue to
6 litigate against Wells Fargo and JP Morgan, they would assert
7 defenses at each stage of the litigation including class cert,
8 summary judgment and trial. We would face steep monetary
9 expenses associated with discovery and retention of experts to
10 rebut these defenses. We think the settlement secures their
11 immediate cooperation which is particularly valuable at this
12 stage of litigation as co-lead counsel attempt to negotiate a
13 settlement.

14 Accordingly, the benefits of settlement outweigh the
15 costs and risks associated with further litigation against
16 these defendants.

17 Grinnell factor 7 is the ability to withstand a
18 greater judgment. It is possible that Wells Fargo and JP
19 Morgan can withstand a greater judgment, however, given the
20 costs and risks of further litigation against each of these
21 defendants as well as the ongoing difficult financial climate,
22 the settlement represents a significant recovery.

23 Factors 8 and 9, the range of reasonableness of the
24 settlement fund in light of the best possible recovery and all
25 attendant risks of litigation. The settlement contains a

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1 substantial cash payment of over \$77 million and valuable
2 cooperation that will likely improve our chance of recovery
3 from non-settling defendants.

4 For all of these reasons, plaintiffs respectfully
5 submit that the settlement with Wells Fargo and JP Morgan are
6 fair, reasonable and adequate.

7 In terms of finding under Rule 23(e)(1) that the
8 notice was reasonable and Rule 23(c)(2)(b) that this was the
9 best notice practicable, we will note for the record that we
10 submitted the Livesay and Miller affidavits to the Court
11 establishing that the notices for the settlement took place
12 timely and in full accord with the order that this Court
13 entered regarding our notice plan.

14 I can go into that further, your Honor, if you wish,
15 but we will say that direct notice was mailed timely and we
16 made publication notice in 22 publications, each of that
17 contained abbreviated information regarding the settlement
18 including the monetary terms and each direct notice to
19 plaintiff received information in plain language about the
20 action.

21 So plaintiffs respectfully submit that the notice
22 program comports with due process and the requirements of Rule
23.

24 Turning to the CAFA notice, under the settlement
25 agreement, each defendant was required to file with the notice

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1 requirements of CAFA. JP Morgan has timely complied with the
2 CAFA notice and the 90-day waiting period has expired. The
3 actual CAFA notice is attached to plaintiffs' proposed final
4 approval order for JPM. Nothing prevents this Court from entry
5 of this order.

6 Wells Fargo issued its CAFA notice November 18, 2012
7 and as a result, under CAFA, this Court cannot grant final
8 approval until the expiration of 90 days or February 15, 2014.
9 Once that statutory waiting period has expired, the Wells Fargo
10 approval order can be entered by the Court.

11 I have nothing further.

12 THE COURT: Thank you.

13 Anything from any of the defendants for the Court's
14 consideration?

15 MR. RICE: Unless your Honor has any questions,
16 nothing from JP Morgan.

17 MR. VIAPIANO: Your Honor, for Wells Fargo the only
18 thing I would add, we have spoken to the two addressees of the
19 OCC as to Wells Fargo CAFA notice and we are authorized to
20 represent that the OCC believes that after the 90 days have
21 passed from February 15th that it has received adequate notice
22 under CAFA and has no intention of objecting either to the
23 notice or to the substance of the settlement of Wells Fargo.

24 THE COURT: Thank you.

25 Upon consideration of the submission from the parties,

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1 the draft of the final settlement and the record of the case up
2 to this point, the Court finds that granting final approval to
3 the settlement with defendants JP Morgan and Wells Fargo is
4 warranted. I find the factors of the Second Circuit in
5 Grinnell to be present here.

6 I am satisfied that the settlement is adequate, fair
7 and reasonable in light of the various considerations of the
8 complexity of this case being antitrust and involving many,
9 many parties from both sides; the response of the class
10 indicating no objections; the stage of the proceedings; the
11 discovery; the extent and the amount of discovery that would be
12 obviated by the settlement; the various risks of liability and
13 damages; the potential defenses that would have to be litigated
14 if the case proceeds; the impact of the settlement on the
15 non-settling defendants at this point as far as the plaintiffs,
16 it may enhance the ability of the plaintiffs to bring about
17 additional settlements.

18 Overall, I am satisfied that the Grinnell factors have
19 been demonstrated here.

20 I also find that the notice of the settlement under
21 Rule 23 and due process are satisfied as well and I make those
22 findings.

23 So I will endorse the granting of the final approval
24 as to JP Morgan Chase and I will withhold the approval of Wells
25 Fargo until on or after February 15, 2013.

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1 Is there anything else, Ms. Jones?

2 MS. JONES: No, your Honor.

3 THE COURT: Anything else from defense?

4 MR. RICE: No, your Honor. Thank you.

5 THE COURT: Thank you very much.

6 Have a good day and a good holiday.

7 MS. JONES: Would it be inconvenient for the Court for
8 us to hand up the orders to your clerk?

9 THE COURT: Not at all, if you have final copies.

10 MS. JONES: Thank you.

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